

REMARKS

Claims 1-45, 47, and 49-60 are pending in the present application. Claims 1-34, 37-45, and 51-60 were previously withdrawn from consideration as drawn to a non-elected invention. By virtue of this response, claims 35, 47, 49, and 50 have been amended. No claims have been cancelled and no claims have been added. No new matter has been entered. Accordingly, claims 35, 36, 47, 49, and 50 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Summary of Examiner Interview

Applicant thanks Examiner Dowe for the telephone interview had on September 4, 2008, during which pending independent claim 35, and the references cited in the Office Action dated June 6, 2008, were discussed. In particular, the claim language, “the aperture spanning a longitudinal length thereof and retaining a mandrel therein” was discussed. The Examiner suggested adding a further limitation to clarify that the aperture retaining the mandrel therein is different from a lumen that may be present in the device. In order to expedite the issuance of this case, Applicant has amended the claims pursuant to Examiner Dowe’s suggestion, and these amendments are reflected in the listing of claims above.

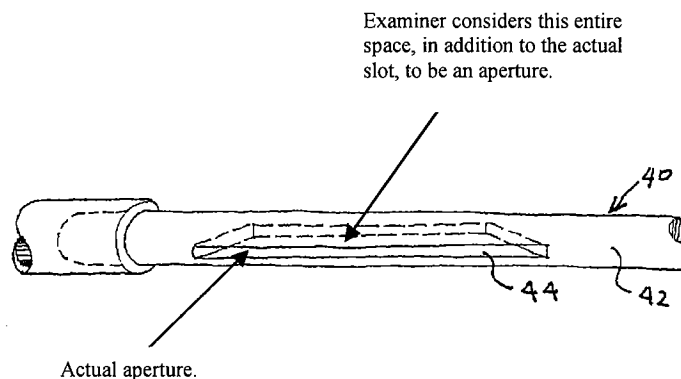
Claim Rejections under 35 U.S.C. §103(a)**Claims 35, 36, 47, 49, and 50**

Claims 35, 36, 47, 49, and 50 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Pat. No. 7,004,958 to Adams et al. (“Adams”) in view of U.S. Pat. Pub. No. 2002/0087169 to Brock et al. (“Brock”). Applicant strongly disagrees with this rejection.

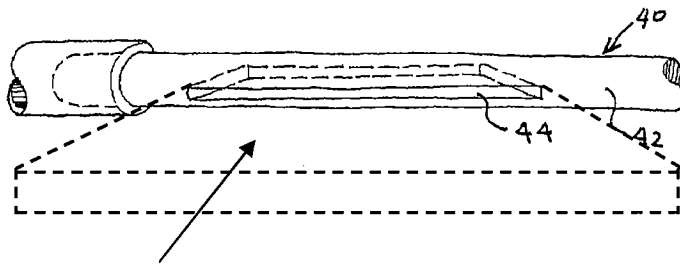
Independent claim 35, from which the remaining rejected claims depend, has been amended to recite a device having a first configuration and a second configuration, where the device comprises an elongate body having a proximal end and a distal end and a housing at the distal end,

the housing having a housing body for retaining at least one tethered anchor, *the housing body comprising a side wall spanning a longitudinal length thereof, wherein the side wall has at least one aperture disposed longitudinally therein the aperture having a first opening and a second opening.* The claim further recites that when the device is in the first configuration the aperture retains a mandrel therein, *the mandrel preventing release of the at least one tethered anchor*, and that when the device is in the second configuration the mandrel is at least partially withdrawn *from the aperture to release the at least one tethered anchor from the housing body.*

The Office Action relies upon Adams for support of a housing comprising an aperture that retains a mandrel therein. Applicant strongly disagrees with the interpretation of the term “aperture” given by the Examiner during the telephonic interview referenced above. Specifically, the Examiner’s interpretation of an “aperture” as discussed during that interview is a hole and apparently some infinite volume of space that may flow therefrom. That is, the Examiner considers the aperture of Adams to be the aperture in the side wall of the catheter (i.e., the break-away slot 44) in addition to an imaginary volume of space behind that aperture that includes the lumen of the device as shown below.

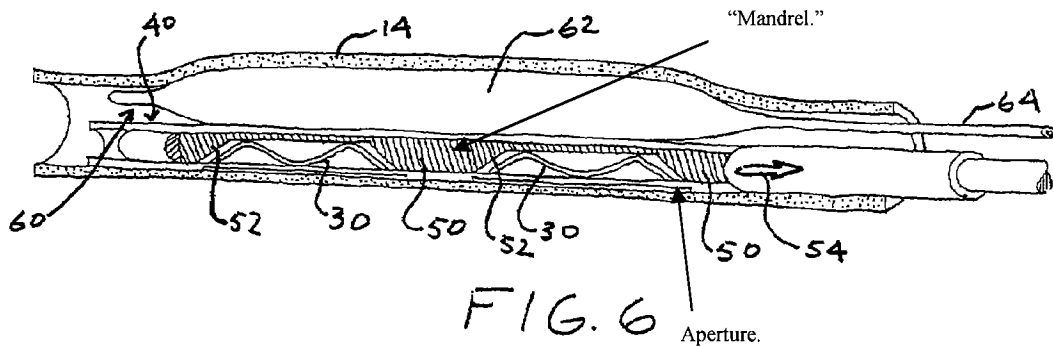
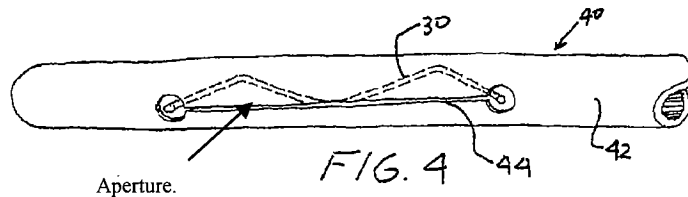


Applicant asserts that this interpretation of the term “aperture” is illogical and contrary to any ordinary definition of that term. Indeed, under the Examiner’s logic the aperture would extend for some imaginary depth and distance in either direction from the actual aperture:

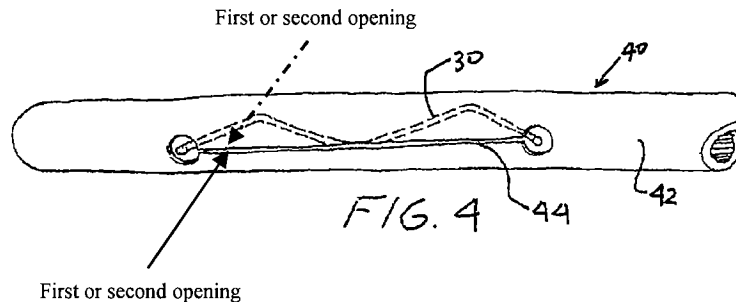


Under the Examiner's definition of the term "aperture," this space must also be part of the aperture.

Such an interpretation is obviously without merit. An aperture is an opening or hole, and an opening or hole must be bound by some object or solid, or have some boundaries, to give that term meaning. Put another way, an aperture is an area or volume that is missing from an object or solid. With this understanding, it becomes clear that the aperture in the side wall of Adams does not have a mandrel disposed therein under any configuration of that device. The figures and supporting specification of Adams make it clear that the aperture is merely a break-away slot in the side wall of the catheter, while the "mandrel" of Adams referred to by the Office Action (tool 50) is in the lumen.



Nevertheless, in order to expedite this case to issuance, the Applicant has further amended the claims to recite that the aperture has a first opening and a second opening. The first and second openings of Adams must necessarily be the inside and outside of break-away slot 44 (since that is the only aperture in a side wall that spans a longitudinal length of a housing).



This additional limitation makes clear that the aperture of Adams does not retain a mandrel therein and that the mandrel is never partially withdrawn from the aperture. Indeed, it is not even possible to withdraw (partially or otherwise) the “mandrel” (i.e., tool 50) from the aperture of the device of Adams.

Claim 35 has also been amended to recite that the *side wall* of the housing body (the side wall itself spans a longitudinal length of the housing so cannot be considered to be at an end of the device) has an aperture disposed *longitudinally therein*. That is, the aperture is at least partially enclosed by the sidewall and has some length in the longitudinal direction. The aperture of Adams is merely a breakaway slot in the side wall of a catheter body and while the side wall thus has an aperture *therethrough*, it does not have an aperture *disposed longitudinally therein*.

Lastly, independent claim 35 has also been amended to recite that the device in the first configuration has a mandrel retained in the aperture, the mandrel “*preventing release of the at least one tethered anchor*.” The mandrel of Adams does not prevent release of an anchor. The tool (50) of Adams (what the Office Action refers to as the “mandrel”) is used to force the staples from the catheter, but does nothing to prevent the release of the staples themselves. Indeed, it is the aperture,

or the break-away slot (44) that prevents the staples of Adams from being released prior to them being forced out of the catheter via the tool. Adams states, the “slot **44** preferably comprises a reduced thickness of the tubular wall **42** to provide an effective seal prior to deployment but permitting a relatively modest force to urge the device **30** through the slot **44**...[h]ence the slot **44** is a break-away slot providing seal integrity prior to deployment...” (*See* col. 7, lines 8-15).

The limitations described above clearly differentiate a side wall spanning a longitudinal length of a housing and having an aperture disposed longitudinally therein, from a tool in a lumen of a catheter. Applicant has clearly specified how Adams fails to teach and every limitation of the pending claims. Brock, which was relied upon for support of a plurality of tethered anchors, fails to cure these deficiencies. Therefore, a *prima facie* case of obviousness has not been established, and the rejection of the current claims under 35 U.S.C. §103 cannot stand. Accordingly, Applicant respectfully requests that the rejection be withdrawn and this application be passed to issuance.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issuance. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby.

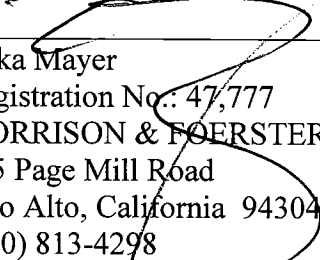
Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 578492001500.

However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: October 6, 2008

Respectfully submitted,

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